

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NATANAEL ESCARCEGA,

Plaintiff,

vs.

No. CV 17-00335 KG/JHR

CORRECTIONS COMPANY OF AMERICA
(CORE CIVIC) N.M.D.O.C. CENTURIAN L.L.C.,
and ANY AN ALL WHO ARE EMPLOYED
BY THEM,

Defendants.

MEMORANDUM OPINION AND FINAL ORDER OF DISMISSAL

THIS MATTER is before the Court under 28 U.S.C. § 1915A, 28 U.S.C. § 1915(e)(2)(B), and Fed. R. Civ. P. 12(b)(6) on the Complaint for Violation of Civil Rights filed by Plaintiff Natanael Escarcega on March 13, 2017 (Doc. 1) (“Complaint”). The Court dismissed the Complaint without prejudice for failure to state a claim on which relief can be granted and also granted Plaintiff Escarcega leave to file an amended complaint. (Doc. 12). The deadline for Escarcega to amend has expired and Escarcega has not filed an amended complaint or otherwise responded to the Court’s Order. The Court now dismisses the Complaint with prejudice.

Plaintiff Escarcega is incarcerated at Northwest New Mexico Correctional Facility. (Doc. 1 at 6, 11). He is proceeding pro se and *in forma pauperis*. Escarcega filed his Complaint for Violation of Civil Rights on March 13, 2017, seeking relief under 42 U.S.C. § 1983. (Doc. 1). On November 1, 2018, the Court dismissed all claims in Escarcega’s Complaint without prejudice for failure to state a claim on which relief can be granted. (Doc. 12). The Court dismissed Escarcega’s claims on three grounds:

(1) Plaintiff Escarcega does not allege personal involvement by an identified official in any alleged constitutional violation. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009); *Trask v. Franco*, 446 F.3d 1036, 1046 (10th Cir. 1998);

(2) the Complaint fails to state a claim for relief against Corrections Company of America, C.C.A., Core Civic, Centurian L.L.C., or Trinity Food Service because Escarcega does not assert that any entity Defendant instituted an official policy that was a direct cause or moving force behind any constitutional violations. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–85 (1986); *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 820 (1985); *Monell v. Dep't of Social Services of New York*, 436 U.S. 658, 691 (1978); and

(3) The New Mexico Corrections Department is a state agency and there is no remedy against the State under § 1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 63-64 (1989).

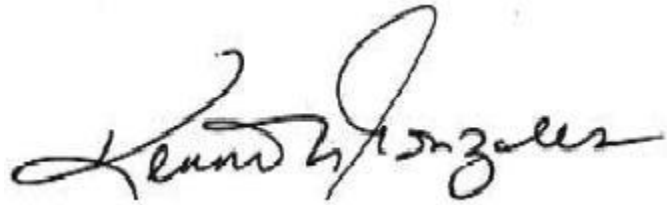
(Doc. 12 at 4-7).

Consistent with Tenth Circuit precedent, the Court allowed Plaintiff Escarcega an opportunity to amend the Complaint. *Reynoldson v. Shillinger*, 907 F.2d 124, 126 (10th Cir. 1990). The Court granted Escarcega 30 days from November 1, 2018, to file an amended complaint stating a claim for relief. (Doc. 12 at 7-8). More than 30 days has elapsed, and Escarcega has not filed an amended complaint or responded to the Court's November 1, 2018, Memorandum Opinion and Order.

Plaintiff Escarcega's Complaint is factually insufficient and fails to state any claim for § 1983 relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although given an opportunity to remedy the deficiencies in his pleading, Escarcega has neither amended the Complaint nor responded to the Court. The Court will now dismiss Escarcega's Complaint with

prejudice for failure to state a claim on which relief can be granted and enter final judgment. Fed. R. Civ. P. 12(b)(6); 28 U.S.C. § 1915(e)(2)(B).

IT IS ORDERED that Natanael Escarcega's Complaint for Violation of Civil Rights (Doc. 1) is DISMISSED with prejudice for failure to state a claim on which relief can be granted and final judgment will be entered.

A handwritten signature in black ink, appearing to read "Leonard H. Gonzales". The signature is fluid and cursive, with a large initial "L" and "G".

UNITED STATES DISTRICT JUDGE